

The  
BEFORE THE  
FEDERAL ELECTION COMMISSION

Received  
Federal Election Comm  
Office of General Counsel

2015 NOV 10 AM 9:00

American Democracy Legal Fund  
455 Massachusetts Avenue, N.W.  
Washington, DC 20001

Complainant,

v.

Mr. John Ellis "Jeb" Bush  
PO Box 440669  
Miami, FL 3144

Jeb 2016, Inc., and William Simon, Treasurer  
PO Box 440669  
Miami, FL 3144

MUR # 6984

Right to Rise USA, and Charles R. Spies, Treasurer  
601 Pennsylvania Avenue NW  
North Building, Suite 1000  
Washington, DC 20004

Respondents.

COMPLAINT

Complainant files this complaint with the Federal Election Commission (the "FEC" or "Commission") under 52 U.S.C. § 30109(a)(1) against Mr. John Ellis "Jeb" Bush, Jeb 2016, Inc. and William Simon, its treasurer, in his official capacity, and Right to Rise USA, and Charles Spies (hereinafter "Right to Rise" or the "Super PAC"), its treasurer, in his official capacity (collectively, "Respondents") for violating the Federal Election Campaign Act of 1971, as amended ("the Act"). According to multiple reports filed by the Respondents with the Commission, Respondents appear to have engaged in illegal coordination through the use of a common vendor, and the Commission should act immediately to investigate the full scope of these violations, ensure they cease immediately, and seek the appropriate financial penalties.

## I. FACTUAL BACKGROUND

On June 15, 2015 Jeb Bush filed a Statement of Candidacy for President of the United States with the Commission.<sup>1</sup> His principal campaign committee is Jeb 2016, Inc.<sup>2</sup> Right to Rise USA is an independent expenditure-only committee or Super PAC organized to support Mr. Bush's federal candidacy.<sup>3</sup>

According to public records, Right to Rise and Mr. Bush's campaign used a common vendor within 120 days of Right to Rise publicly disseminating two communications expressly advocating for Mr. Bush's election in violation of the Act and Commission regulations. Specifically, David Kochel was paid \$25,000 on July 2 and July 31, 2015 for "political strategy consulting" for Jeb 2016, Inc.<sup>4</sup> Mr. Kochel is a self-described "senior strategist" for Jeb 2016, Inc.<sup>5</sup> Media reports describe him as Mr. Bush's "chief strategist."<sup>6</sup> Additionally, on July 2 and August 3, 2015, Jeb 2016, Inc. paid \$5,000 to Albrecht Public Relations, LLC for "political strategy consulting."<sup>7</sup> Albrecht Public Relations LLC was formed by Tim Albrecht in 2009.<sup>8</sup> As part of this "political strategy consulting," Mr. Albrecht has set up media interviews and staffed both Mr. Bush and Mr. Bush's son at the Iowa state fair.<sup>9</sup>

<sup>1</sup> FEC Form 2, Statement of Candidacy, Jeb Bush (June 15, 2015), available at <http://docquery.fec.gov/pdf/747/15031431747/15031431747.pdf>.

<sup>2</sup> *Id.*

<sup>3</sup> See FEC Form 1, Statement of Organization, Right to Rise USA (June 12, 2015), available at <http://docquery.fec.gov/pdf/367/15951468367/15951468367.pdf>; Right to Rise USA, available at <https://righttorisesuperpac.org/#/home?lang=en> ("Right to Rise USA is the leading independent super PAC supporting Jeb Bush's campaign for President.")

<sup>4</sup> FEC Schedule B-P (Form 3P), Itemized Disbursements, Jeb 2016, Inc. at 3645-46 (Oct. 15, 2015), available at <http://docquery.fec.gov/pdf/351/201510159003078351/201510159003078351.pdf>.

<sup>5</sup> @ddkochel, David Kochel, <https://twitter.com/ddkochel> (last accessed Oct. 16, 2015).

<sup>6</sup> Katie Glueck, *The Power Players Behind Jeb Bush's Campaign*, Politico (June 15, 2015), available at <http://www.politico.com/story/2015/06/jeb-bush-2016-campaign-staff-power-players-119012>.

<sup>7</sup> FEC Schedule B-P (Form 3P), Itemized Disbursements, Jeb 2016, Inc. at 4142 (Oct. 15, 2015), available at <http://docquery.fec.gov/pdf/351/201510159003078351/201510159003078351.pdf>.

<sup>8</sup> See About Tim Albrecht and Albrecht Public Relations, Albrecht Public Relations, available at <http://albrechtpr.com/>.

<sup>9</sup> Craig Robinson, *Jeb's Black Hand is Not the Only Shady Thing About the Right to Rise Mailer*, The Iowa Republican (Aug. 25, 2015), available at <http://theiowarepublican.com/2015/jeb-black-hand-is-not-the-only-shady-thing-about-the-right-to-rise-mailer/>.

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Mr. Kochel also is the sole owner of Redwave Communications LLC ("Redwave").<sup>10</sup>

While David Kochel was paid by Mr. Bush's campaign, Redwave was providing services to Right to Rise. Additionally, while working for Mr. Bush's campaign, Tim Albrecht was also employed by Redwave.<sup>11</sup> On August 18, 2015, Right to Rise paid Redwave \$23,625.14 for postage for communications supporting Mr. Bush that were publicly distributed on August 20, 2015.<sup>12</sup> On August 19, 2015, Right to Rise paid Redwave \$57,334.15 for printing related to communications supporting Mr. Bush that were publicly distributed on August 20, 2015.<sup>13</sup> The printing and postage costs by Right to Rise appear to be related to two mailers sent by Right to Rise.<sup>14</sup> The first mailer was sent to more than 86,000 households in Iowa and landed in mailboxes on August 20, 2105 (hereinafter the "Iowa Mailer")<sup>15</sup> and the second mailer was sent

<sup>10</sup> See Redwave Communications, About Us, available at <http://redwavecommunications.com/>.

<sup>11</sup> *Id.*

<sup>12</sup> FEC Form 3X, Schedule E 24/48 Hour Report of Independent Expenditures, Right to Rise USA (Aug. 20, 2015), available at <http://docquery.fec.gov/pdf/074/201508219000927074/201508219000927074.pdf#navpanes=0>; see also Right to Rise USA, Twitter (Aug. 20, 2015, 12:28 PM EST), <https://twitter.com/r2rusa/status/634401700346884096/photo/1> ("IOWA: Check your mail boxes today. Mail piece hitting more than 86k households. #conservativeresultsmatter").

<sup>13</sup> FEC Form 3X, Schedule E 24/48 Hour Report of Independent Expenditures, Right to Rise USA (Aug. 20, 2015), available at <http://docquery.fec.gov/pdf/074/201508219000927074/201508219000927074.pdf#navpanes=0>; see also Right to Rise USA, Twitter (Aug. 20, 2015, 12:28 PM EST), <https://twitter.com/r2rusa/status/634401700346884096/photo/1> ("IOWA: Check your mail boxes today. Mail piece hitting more than 86k households. #conservativeresultsmatter"); Right to Rise USA, Twitter (Aug. 20, 2015, 9:30 AM EST), [https://mobile.twitter.com/r2rusa/status/634402130728620032/photo/1?ref\\_src=twsrc%5Etfw](https://mobile.twitter.com/r2rusa/status/634402130728620032/photo/1?ref_src=twsrc%5Etfw) ("NEW HAMPSHIRE: Check your mailboxes today. Mail piece hitting more than 150k households. #conservativeresultsmatter").

<sup>14</sup> See Nick Glass, *Jeb Bush Super PAC Floods Iowa, New Hampshire with Campaign Mailers*, Politico (Aug. 20, 2015), available at <http://www.politico.com/story/2015/08/jeb-bush-super-pac-2016-campaign-mailers-iowa-new-hampshire-121567>; Right to Rise USA, Twitter (Aug. 20, 2015, 12:28 PM EST), <https://twitter.com/r2rusa/status/634401700346884096/photo/1> ("IOWA: Check your mail boxes today. Mail piece hitting more than 86k households. #conservativeresultsmatter"); Right to Rise USA, Twitter (Aug. 20, 2015, 9:30 AM EST), [https://mobile.twitter.com/r2rusa/status/634402130728620032/photo/1?ref\\_src=twsrc%5Etfw](https://mobile.twitter.com/r2rusa/status/634402130728620032/photo/1?ref_src=twsrc%5Etfw) ("NEW HAMPSHIRE: Check your mailboxes today. Mail piece hitting more than 150k households. #conservativeresultsmatter").

<sup>15</sup> Right to Rise USA, Twitter (Aug. 20, 2015, 12:28 PM EST), <https://twitter.com/r2rusa/status/634401700346884096/photo/1> ("IOWA: Check your mail boxes today. Mail piece hitting more than 86k households. #conservativeresultsmatter"); Robinson, *supra* note 9.

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to more than 150,000 households in New Hampshire and landed in mailboxes that same day (hereinafter the "New Hampshire Mailer") (collectively, the "Mailers").<sup>16</sup>

The Iowa Mailer features Mr. Bush in front of the bank of the Cedar River in Cedar Rapids, Iowa<sup>17</sup> and says "Why Jeb?" on the front.<sup>18</sup> On the back, the Iowa Mailer quotes George Will and The Weekly Standard supporting Mr. Bush and says "Jeb" and "Real Conservative Results."<sup>19</sup> The Iowa Mailer includes a disclaimer that it was paid for by Right to Rise USA.<sup>20</sup>

The New Hampshire Mailer features Mr. Bush in front of a car and people and said "Why Jeb? on the front."<sup>21</sup> On the back, the New Hampshire Mailer says "Jeb will bring fiscal common sense to America" and says "It starts in New Hampshire."<sup>22</sup> The New Hampshire Mailer also explains Mr. Bush's "Real Conservative Results" by listing how many new jobs her created as Governor of Florida, how much money he provided in tax cuts, and how much money he vetoed in spending.<sup>23</sup> The New Hampshire Mailer includes a disclaimer that it was paid for by Right to Rise USA.<sup>24</sup>

## II. LEGAL ANALYSIS

The FEC should investigate whether Jeb 2016, Inc. accepted and Right to Rise made illegal in-kind contributions to Mr. Bush's campaign through the use of a common vendor.

<sup>16</sup> Right to Rise USA, Twitter (Aug. 20, 2015, 9:30 AM EST), [https://mobile.twitter.com/r2rusa/status/634402130728620032/photo/1?ref\\_src=twsrc%5Etfw](https://mobile.twitter.com/r2rusa/status/634402130728620032/photo/1?ref_src=twsrc%5Etfw) ("NEW HAMPSHIRE: Check your mailboxes today. Mail piece hitting more than 150k households. #conservativeresultsmatter.").

<sup>17</sup> Robinson, *supra* note 9.

<sup>18</sup> See Exhibit A.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> See Exhibit B.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

The Act limits the amount of money that any person may contribute to Federal candidates and political committees.<sup>25</sup> It is illegal for anybody to contribute, and for any candidate to receive, contributions to candidates in excess of \$2,700 per election.<sup>26</sup> The Act also prohibits corporations from making contributions or expenditures in connection with Federal elections.<sup>27</sup>

Federal law treats expenditures by a non-party, non-candidate sponsor that are coordinated with a campaign as in-kind contributions to the candidates or political party with whom they were coordinated. Specifically, "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate."<sup>28</sup> An expenditure for a communication is a "coordinated communication" and an in-kind contribution to a campaign if it is (1) paid for by an entity other than the candidate or candidate's campaign; (2) meets certain content standards, including by being a public communication that expressly advocates the election or defeat of a clearly identified candidate; and (3) meets certain conduct standards, including the payor and the candidate, the candidate's opponent, or a political party using a common vendor.<sup>29</sup>

The paid-for prong of the coordinated communications standard is clearly satisfied for both the Mailers. The Mailers each include a paid for box that states it was "Paid for by Right to Rise USA."

The Mailers also easily meet the content prong because they are public communications that expressly advocate the election of a clearly identified candidate for Federal office<sup>30</sup> and are

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<sup>25</sup> 52 U.S.C. § 30116(a).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* § 30118.

<sup>28</sup> *Id.* § 30116(a)(7)(B)(i).

<sup>29</sup> See 11 C.F.R. §§ 109.21(a), (c)(3), (d)(4).

<sup>30</sup> *Id.* § 109.21(c)(3).

also "the functional equivalent of express advocacy."<sup>31</sup> A "public communication" includes a communication by means of mass mailing, which means a mailing by United States mail of more than 500 pieces of identical or substantial similar nature within any 30-day period.<sup>32</sup> As Right to Rise bragged that on August 20, 2015 it sent the Iowa Mailer to more than 86,000 households and the New Hampshire Mailer to more than 150,000 households, they are each unmistakably a public communication.<sup>33</sup>

The Mailers expressly advocate for the election of Mr. Bush. "Expressly advocating" includes communications that "in context can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s), such as . . . advertisements . . . which say . . . 'Carter '76.'"<sup>34</sup> "Expressly advocating" also includes messages that

When taken as a whole . . . could only be interpreted by a reasonable person as containing advocacy of the election or defeat of one or more clearly identified candidate(s) because (1) [t]he electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and (2) [r]easonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.<sup>35</sup>

<sup>31</sup> *Id.* § 109.21(c)(5).

<sup>32</sup> *Id.* § 100.26.

<sup>33</sup> Right to Rise USA, Twitter (Aug. 20, 2015, 12:28 PM EST), <https://twitter.com/r2rise/status/634401700346884096/photo/1> ("IOWA: Check your mail boxes today. Mail piece hitting more than 86k households. #conservativeresultsmatter"); Right to Rise USA, Twitter (Aug. 20, 2015, 9:30 AM EST), [https://mobile.twitter.com/r2rise/status/634402130728620032/photo/1?ref\\_src=twsrc%5Etfw](https://mobile.twitter.com/r2rise/status/634402130728620032/photo/1?ref_src=twsrc%5Etfw) ("NEW HAMPSHIRE: Check your mailboxes today. Mail piece hitting more than 150k households. #conservativeresultsmatter.").

<sup>34</sup> 11 C.F.R. § 100.22(a).

<sup>35</sup> *Id.* § 100.22(b).

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A public communication is the functional equivalent of express advocacy "if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified Federal candidate."<sup>36</sup>

In the Iowa Mailer, Right to Rise touts Mr. Bush's conservative results to answer the question "Why Jeb?" The quotes included on the mailer from George Will and The Weekly Standard highlight Mr. Bush's conservative record as Governor of Florida.<sup>37</sup> The Iowa Mailer then says "Jeb" and "Real Conservative Results." Reasonable minds could not differ that the Mailer encourages viewers to vote for Mr. Bush for President as it answers the question of "Why Jeb?"<sup>38</sup> For the same reasons, the Iowa Mailer is also the functional equivalent of express advocacy.<sup>39</sup> Because the Iowa Mailer expressly advocates the election of a clearly identified federal candidate, it meets the content prong of the test.<sup>40</sup>

Likewise, in the New Hampshire Mailer, Right to Rise asks "Why Jeb?" and includes statistics about his actions as the Governor of Florida.<sup>41</sup> The New Hampshire Mailer says "Jeb will bring fiscal common sense to America." Reasonable minds could not differ that the language in the New Hampshire Mailer encourages viewers to vote for Mr. Bush for President. For the same reasons, the New Hampshire Mailer is also the functional equivalent of express advocacy.<sup>42</sup> Because the New Hampshire Mailer expressly advocates the election of a clearly identified federal candidate, it meets the content prong of the test.<sup>43</sup>

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<sup>36</sup> *Id.* § 109.21(c)(5).

<sup>37</sup> *See* Exhibit A.

<sup>38</sup> *See* 11 C.F.R. § 109.21(c)(5).

<sup>39</sup> *See id.* § 109.21(c)(5).

<sup>40</sup> *Id.* § 109.21(c)(3).

<sup>41</sup> *See* Exhibit B.

<sup>42</sup> *See id.* § 109.21(c)(5).

<sup>43</sup> *Id.* § 109.21(c)(3).



candidate's authorized committee and that information is material to the creation, production, or distribution of the communication.<sup>47</sup>

Covered services include development of media strategy; selection of audiences; polling; fundraising; developing the content of a public communication; producing a public communication; identifying voters or developing lists; selecting personnel, contractors or subcontractors; or consulting or otherwise providing political or media advice.<sup>48</sup>

Right to Rise's implicit assertion in filing an independent expenditure report that the Mailers were not made in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents likely will not survive scrutiny. As the above facts show, Right to Rise paid Redwave for the Mailers, which expressly advocate for Mr. Bush's election and were publicly distributed on August 20, 2015. Within the previous 120 days of those disseminations, Redwave's owner, David Kochel, and an employee, Tim Albrecht, provided political consulting services to Mr. Bush's campaign. Specifically, Mr. Kochel was paid on July 2 and July 31, 2015 by Mr. Bush's campaign, which is well within the previous 120 days of August 20, 2015. Mr. Albrecht's firm, Albrecht Public Relations, LLC, was paid on July 2 and August 3, 2015, also well within the previous 120 days of August 20, 2015. Given the fact that Mr. Kochel is a "senior strategist" for Mr. Bush's campaign and is the owner of Redwave, it is likely that he had information about Mr. Bush's campaign plans, projects, activities, and needs and/or had information used previously in providing services for Mr. Bush that was material to the creation, production, or distribution of the Mailers and was conveyed or used by Redwave in the Mailers. Further, Mr. Albrecht's role in providing both political consulting services to Mr. Bush through his firm, Albrecht Public

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<sup>47</sup> *Id.* § 109.21(d)(4).

<sup>48</sup> *See id.* § 109.21(d)(4)(ii)(G).

Relations, LLC, and working for Redwave while it provided services to Right to Rise related to the Mailers, likely make him privy to information about Mr. Bush's campaign plans, projects, activities, and needs and/or information used previously in providing services for Mr. Bush that was material to the creation, production, or distribution of the Mailers and was conveyed or used by Redwave in the Mailers.

Because the Mailers meet the paid-for and content prongs, and likely meet the conduct prongs under 11 C.F.R. § 109.21, they are likely coordinated communications, not an independent expenditures, and thus, should be treated as an in-kind contributions to Mr. Bush's campaign.<sup>49</sup> As Right to Rise is prohibited from making contributions to Mr. Bush's campaign because it raises soft money,<sup>50</sup> it is also prohibited from making coordinated communications.<sup>51</sup> Even if Right to Rise were permitted to make contributions to Mr. Bush's campaign, these coordinated communications would well exceed the \$2,700 limit on contributions to federal candidates under 52 U.S.C. § 30116(a)(1). Thus, Mr. Bush may have violated 52 U.S.C. 30125(e)(1) by receiving illegal and excessive contributions, and Right to Rise may have violated 52 U.S.C. 30116(a)(1) by making such contributions.

### **III. REQUESTED ACTION**

As we have shown, there is strong likelihood that Respondents have violated the Federal Election Campaign Act. We respectfully request the Commission to investigate these likely violations, including whether they were knowing and willful. Should the Commission determine that Respondents have violated FECA, we request that Respondents be enjoined from further violations and be fined the maximum amount permitted by law.

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<sup>49</sup> See 11 C.F.R. § 109.21(b).

<sup>50</sup> See 52 U.S.C. § 30125(e)(1).

<sup>51</sup> 11 C.F.R. § 109.22.

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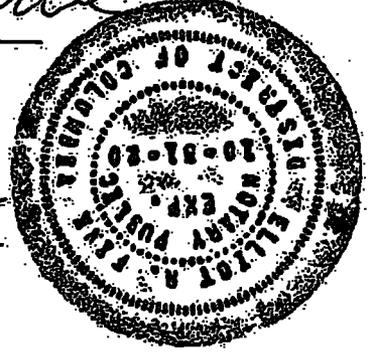
Sincerely,

*[Handwritten signature]*

SUBSCRIBED AND SWORN to before me this 27 day of October, 2015.

*[Handwritten signature]*

Notary Public



My Commission Expires: 10/31/2020

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# Exhibit A

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"Jeb Bush, the most conservative Governor of a large state since Ronald Reagan took office in 1965." — George W. Bush  
 "Jeb Bush was not only the best governor in America but also the most conservative." — The Heritage Foundation

**Jeb**  
 Real Conservative Results.

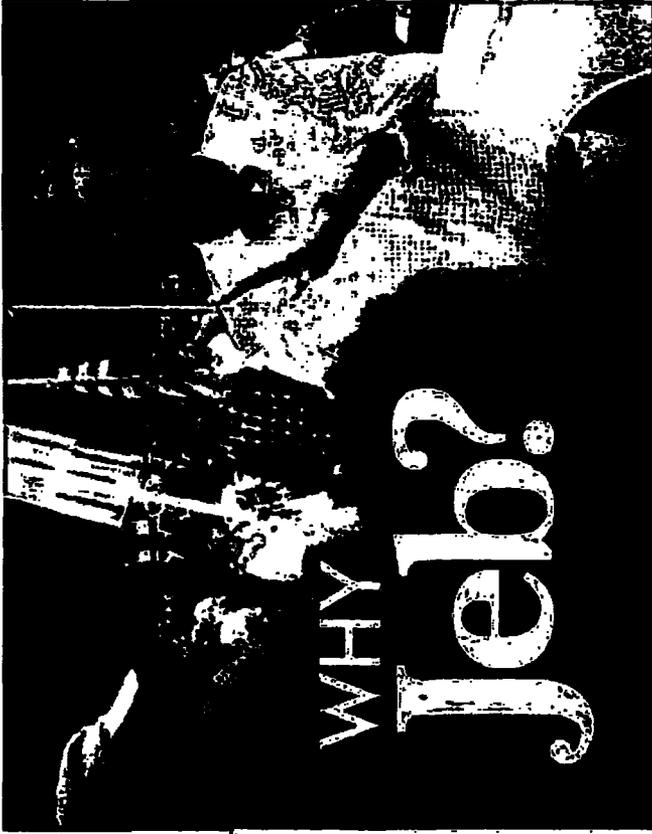
Right to Rise USA  
 www.RightToRiseUSA.org

**WHY Jeb?**

Source: Right to Rise USA, Twitter (Aug. 20, 2015, 12:28 PM EST), <https://twitter.com/r2rusa/status/634401700346884096/photo/1>.



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**Job**  
 Real Conservative Results  
 As Governor of New York  
 100,000 NEW JOBS  
 100 MILLION  
 100 MILLION  
 100 MILLION

IT STARTS IN NEW HAMPSHIRE  
 For more info, visit [RightToRiseUSA.org](http://RightToRiseUSA.org)

**RIGHT TO RISE**  
 THE NATIONAL CENTER FOR POLITICAL FREEDOM AND ECONOMIC GROWTH

Source: Right to Rise USA, Twitter (Aug. 20, 2015, 9:30 AM EST), [https://mobile.twitter.com/r2rusa/status/634402130728620032/photo/1?ref\\_src=twsrc%5Etfw](https://mobile.twitter.com/r2rusa/status/634402130728620032/photo/1?ref_src=twsrc%5Etfw).